

House File 2222 - Introduced

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BY RIZER

A BILL FOR

1 An Act creating the Iowa electronic communications privacy Act
2 and providing remedies.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 808B.1 Title.

2 This chapter shall be known as the "*Iowa Electronic*
3 *Communications Privacy Act*".

4 Sec. 2. NEW SECTION. 808B.2 Definitions.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Adverse result*" means any of the following:

8 a. Danger to the life or physical safety of an individual.

9 b. Flight from prosecution.

10 c. Destruction of or tampering with evidence.

11 d. Intimidation of potential witnesses.

12 e. Serious jeopardy to an investigation or undue delay of a
13 trial.

14 2. "*Authorized possessor*" means the possessor of an
15 electronic device when that person is the owner of the
16 electronic device or has been authorized to possess the
17 electronic device by the owner of the device.

18 3. "*Electronic communication*" means the transfer of signs,
19 signals, writings, images, sounds, data, or intelligence of any
20 nature in whole or in part by a wire, radio, electromagnetic,
21 photoelectric, or photo-optical system.

22 4. "*Electronic communication information*" means any
23 information about an electronic communication or the use of an
24 electronic communication service, including but not limited to
25 the contents, sender, recipients, format, or location of the
26 sender or recipients at any point during the communication; the
27 time or date the communication was created, sent, or received;
28 or any information pertaining to any individual or device
29 participating in the communication, including but not limited
30 to an internet protocol address. "*Electronic communication*
31 *information*" does not include subscriber information as defined
32 in this chapter.

33 5. "*Electronic communication service*" means a service that
34 provides to its subscribers or users the ability to send or
35 receive electronic communications, including any service that

1 acts as an intermediary in the transmission of electronic
2 communications, or stores electronic communication information.

3 6. *"Electronic device"* means a device that stores,
4 generates, or transmits information in electronic form.

5 7. *"Electronic device information"* means any information
6 stored on or generated through the operation of an electronic
7 device, including the current and prior locations of the
8 electronic device.

9 8. *"Electronic information"* means electronic communication
10 information or electronic device information.

11 9. *"Government entity"* means a department or agency of the
12 state or a political subdivision of the state, or an individual
13 acting for or on behalf of the state or a political subdivision
14 of the state.

15 10. *"Service provider"* means a person or entity offering an
16 electronic communication service.

17 11. *"Specific consent"* means consent provided directly
18 to the government entity seeking information, including but
19 not limited to when the government entity is the addressee
20 or intended recipient or a member of the intended audience
21 of an electronic communication. *"Specific consent"* does not
22 require that the originator of the communication have actual
23 knowledge that an addressee, intended recipient, or member of
24 the specific audience is a government entity.

25 12. *"Subscriber information"* means the name, address,
26 telephone number, electronic mail address, or similar contact
27 information provided by the subscriber to the service provider
28 to establish or maintain an account or communication channel,
29 a subscriber or account number or identifier, the length
30 of service, and the types of services used by a user of or
31 subscriber to a service provider.

32 Sec. 3. NEW SECTION. 808B.3 Unlawful acts — exceptions.

33 1. a. Except as provided in subsections 2 and 3, a
34 government entity shall not do any of the following:

35 (1) Compel the production of or access to electronic

1 communication information from a service provider.

2 (2) Compel the production of or access to electronic device
3 information from any person or entity other than the authorized
4 possessor of the device.

5 (3) Access electronic device information by means of
6 physical interaction or electronic communication with the
7 electronic device.

8 *b.* This subsection does not prohibit the intended recipient
9 of an electronic communication from voluntarily disclosing
10 electronic communication information concerning that electronic
11 communication to a government entity.

12 2. A government entity may compel the production of or
13 access to electronic communication information from a service
14 provider, or compel the production of or access to electronic
15 device information from any person or entity other than the
16 authorized possessor of the electronic device only under the
17 following conditions:

18 *a.* Pursuant to a warrant issued pursuant to chapter 808 and
19 subject to section 808B.4.

20 *b.* Pursuant to a court order authorizing the production of
21 or access to electronic communication information.

22 *c.* Pursuant to a subpoena, provided that the electronic
23 information is not sought for the purpose of investigating
24 or prosecuting a criminal offense and if not otherwise
25 prohibited by state or federal law. This paragraph shall not
26 be construed to expand any authority under state law to compel
27 the production of or access to electronic information.

28 3. A government entity may access electronic device
29 information by means of physical interaction or electronic
30 communication with the electronic device only under the
31 following conditions:

32 *a.* Pursuant to a warrant issued pursuant to chapter 808 and
33 subject to section 808B.4.

34 *b.* Pursuant to a court order authorizing such access to
35 electronic device information.

1 *c.* With the specific consent of the authorized possessor of
2 the electronic device.

3 *d.* With the specific consent of the owner of the electronic
4 device, only when the electronic device has been reported as
5 lost or stolen.

6 *e.* If the government entity, in good faith, believes that
7 an emergency involving danger of death or serious physical
8 injury to any person requires access to the electronic device
9 information.

10 *f.* If the government entity, in good faith, believes the
11 electronic device to be lost, stolen, or abandoned and access
12 to the electronic device by the government entity is necessary
13 to identify, verify, or contact the authorized possessor of the
14 electronic device.

15 Sec. 4. NEW SECTION. **808B.4 Warrant requirements.**

16 1. A warrant for electronic information shall meet all of
17 the following requirements:

18 *a.* Describe with particularity the electronic information
19 to be seized by specifying the time periods covered and,
20 as appropriate and reasonable, the target individuals or
21 accounts, the applications or services covered, and the types
22 of electronic information sought.

23 *b.* Require that any electronic information obtained through
24 the execution of the warrant that is unrelated to the objective
25 of the warrant be sealed and not be subject to further review,
26 use, or disclosure without a court order. A court shall issue
27 such an order upon a finding that there is probable cause
28 to believe that the electronic information is relevant to an
29 active investigation, or such review, use, or disclosure is
30 required by state or federal law.

31 *c.* Comply with all other provisions of state and federal
32 law, including any provisions prohibiting, limiting, or
33 imposing additional requirements on the use of search warrants.
34 If directed to a service provider, the warrant shall be
35 accompanied by an order requiring the service provider to

1 verify the authenticity of electronic information that it
2 produces by affidavit.

3 2. When issuing any warrant or court order for electronic
4 information, or upon the petition from the subject or recipient
5 of the warrant or court order, a court may, in its discretion,
6 do any of the following:

7 a. Appoint a referee or special master charged with ensuring
8 that only electronic information necessary to achieve the
9 objective of the warrant or order is produced or accessed.

10 b. Require that any electronic information obtained
11 through the execution of the warrant or the court order that
12 is unrelated to the objective of the warrant be destroyed
13 as soon as practicable upon the termination of the current
14 investigation and any related investigations or proceedings.

15 Sec. 5. NEW SECTION. **808B.5 Electronic communication**
16 **information — voluntary disclosure.**

17 1. A service provider may voluntarily disclose electronic
18 communication information or subscriber information if not
19 otherwise prohibited by state or federal law.

20 2. If a government entity receives electronic communication
21 information voluntarily provided pursuant to subsection 1, the
22 government entity shall destroy that electronic communication
23 information within ninety days unless any of the following
24 apply:

25 a. The government entity has or obtains the specific consent
26 of the sender or recipient of the electronic communication
27 about which electronic communication information was disclosed.

28 b. The government entity obtains a court order authorizing
29 the retention of the electronic communication information. A
30 court shall issue a retention order upon a finding that the
31 conditions justifying the initial voluntary disclosure continue
32 to exist, in which case the court shall authorize the retention
33 of the electronic communication information only as long as
34 those conditions exist, or there is probable cause to believe
35 that the electronic communication information constitutes

1 evidence that a crime has been committed.

2 *c.* The entity reasonably believes that the electronic
3 communication information relates to child pornography and
4 the electronic communication information is retained as part
5 of a multiagency database used in the investigation of child
6 pornography and related crimes.

7 Sec. 6. NEW SECTION. **808B.6 Electronic information —**
8 **emergency.**

9 1. If a government entity obtains electronic information
10 pursuant to an emergency involving the risk of death or
11 serious physical harm to a person that requires access to
12 the electronic information without delay, the government
13 entity shall, within three days after obtaining the electronic
14 information, do any of the following:

15 *a.* File an application with the court for a warrant or order
16 authorizing access to the electronic information.

17 *b.* File a motion with the court seeking approval of the
18 emergency disclosures setting forth the facts giving rise to
19 the emergency.

20 2. *a.* The court shall promptly rule on the application or
21 motion.

22 *b.* Upon a finding that the facts did not give rise to an
23 emergency or upon denying the warrant or order application
24 on any other ground, the court shall order the immediate
25 destruction of all electronic information obtained and shall
26 require the government entity to serve immediate notice
27 pursuant to section 808B.7, subsection 1, if such notice has
28 not already been given.

29 Sec. 7. NEW SECTION. **808B.7 Notice of electronic**
30 **information requests or provision in emergencies.**

31 1. Except as otherwise provided in this section, any
32 government entity that executes a warrant or obtains electronic
33 information in an emergency pursuant to section 808B.6 shall
34 serve notice by certified or registered mail, electronic mail,
35 or any other means reasonably calculated to be effective, on

1 the identified subject of the warrant or emergency request,
2 that informs the identified subject that electronic information
3 about the subject has been compelled or requested and states
4 with reasonable specificity the nature of the government
5 investigation under which the electronic information is sought.
6 The notice shall include a copy of the warrant or a written
7 statement setting forth facts giving rise to the emergency.
8 The notice shall be provided contemporaneously with the
9 execution of a warrant, or, in the case of an emergency, within
10 three days after obtaining the electronic information.

11 2. a. When a warrant is sought or electronic information is
12 obtained in an emergency under section 808B.6, the government
13 entity may submit a request supported by a sworn affidavit
14 for an order delaying notification and prohibiting any party
15 providing electronic information from notifying any other party
16 that electronic information has been sought. The court shall
17 issue the order if the court determines there is reason to
18 believe that notification may have an adverse result, but only
19 for the period of time that the court finds there is reason to
20 believe that the notification may have that adverse result, not
21 to exceed ninety days.

22 b. Upon the expiration of the period of delay of the
23 notification, the government entity shall serve a document that
24 includes the electronic information described in subsection
25 1, a copy of all electronic information obtained or a summary
26 of that electronic information, including, at a minimum, the
27 number and types of records disclosed, the date and time when
28 the earliest and latest records were created, and a statement
29 of the grounds for the court's determination to grant a delay
30 in notifying the individual, by certified or registered mail,
31 electronic mail, or any other means reasonably calculated to
32 be effective, on the identified subject of the warrant or
33 emergency request.

34 Sec. 8. NEW SECTION. 808B.8 Subpoena authority.

35 This chapter shall not limit the authority of a government

1 entity to use an administrative, grand jury, trial, or civil
2 discovery subpoena to do any of the following:

3 1. Require an originator, addressee, or intended recipient
4 of an electronic communication to disclose any electronic
5 communication information associated with that electronic
6 communication.

7 2. Require an entity that provides electronic communication
8 services to its officers, directors, employees, or agents
9 for the purpose of carrying out their duties, to disclose
10 electronic communication information associated with an
11 electronic communication to or from an officer, director,
12 employee, or agent of the entity.

13 3. Require a service provider to provide subscriber
14 information.

15 Sec. 9. NEW SECTION. 808B.9 Relief.

16 1. An aggrieved person in a trial, hearing, or proceeding in
17 or before any court, department, officer, agency, regulatory
18 body, or other authority of this state, may move to suppress
19 any electronic information obtained or retained in violation of
20 the fourth amendment to the Constitution of the United States
21 or Article I, section 8, of the Constitution of the State of
22 Iowa, or of this chapter.

23 2. The attorney general may commence a civil action to
24 compel any government entity to comply with the provisions of
25 this chapter.

26 Sec. 10. REPEAL. Chapter 808B, Code 2016, is repealed.

27 EXPLANATION

28 The inclusion of this explanation does not constitute agreement with
29 the explanation's substance by the members of the general assembly.

30 This bill establishes the Iowa electronic communications
31 privacy Act and provides remedies.

32 ELECTRONIC INFORMATION ACCESS BY GOVERNMENT ENTITY. The
33 bill prohibits a government entity from compelling the
34 production of or access to electronic communication information
35 or electronic device information without a search warrant, a

1 court order, or a subpoena issued under the requirements in
2 the bill. The bill also prohibits a government entity from
3 accessing electronic device information by means of physical
4 interaction or electronic communication with the electronic
5 device without a search warrant, a court order, or specific
6 consent of the owner or other authorized possessor of the
7 electronic device; but allows access if the government entity,
8 in good faith, believes that an emergency situation exists, or
9 that the electronic device is lost, stolen, or abandoned under
10 certain circumstances. The bill includes certain definitions
11 including "electronic communication", "electronic communication
12 information", "electronic communication service", "electronic
13 device", and "electronic device information".

14 VOLUNTARY DISCLOSURE — SERVICE PROVIDER. The bill provides
15 that a service provider may voluntarily disclose electronic
16 communication information or subscriber information to a
17 government entity if not otherwise prohibited by state or
18 federal law, and generally requires the government entity
19 to destroy such information within 90 days unless certain
20 circumstances exist.

21 EMERGENCY. The bill requires a government entity that
22 obtains electronic information pursuant to an emergency
23 involving the risk of death or serious physical harm to a
24 person to file an application with the court for a warrant
25 or order authorizing access to the electronic information
26 or to file a motion with the court seeking approval of the
27 emergency disclosures setting forth the facts giving rise
28 to the emergency. If a court denies the warrant or order
29 authorizing access to the electronic information, the court is
30 required to order the immediate destruction of all electronic
31 information obtained and shall require the government entity to
32 serve immediate notice under the bill.

33 NOTICE. The bill requires a government entity that executes
34 a warrant or obtains electronic information in an emergency
35 situation under the bill to serve notice on the identified

1 subject of the warrant or emergency request that informs the
2 subject that information about the subject has been compelled
3 or requested and that states with reasonable specificity
4 the nature of the government investigation under which the
5 information is sought. The bill provides certain circumstances
6 under which notification of the identified subject of the
7 warrant or emergency request may be delayed.

8 SUBPOENAS. The bill does not limit the authority of a
9 government entity to use an administrative, grand jury, trial,
10 or civil discovery subpoena under certain circumstances.

11 RELIEF. The bill provides that an aggrieved person in
12 a trial, hearing, or proceeding in or before any court,
13 department, officer, agency, regulatory body, or other
14 authority of this state, may move to suppress any electronic
15 information obtained or retained by the government entity in
16 violation of either the state or federal constitution and
17 provides that the attorney general may commence a civil action
18 to compel any government entity to comply with the provisions
19 of the bill.

20 REPEAL. The bill repeals Code chapter 808B, relating to the
21 prohibition, restriction, or authorization of the interception
22 of certain electronic communications by a person and by special
23 state agents.